

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRIN LEON ADAMS,

Defendant-Appellant.

UNPUBLISHED
September 1, 2009

No. 285953
Wayne Circuit Court
LC No. 08-002412-FH

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for second-degree home invasion, MCL 750.110a(3). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 4 ½ to 20 years in prison. On appeal, defendant challenges the sufficiency of the evidence against him. Because we conclude that there was sufficient evidence to support his conviction, we affirm. We have decided this appeal without oral argument under MCR 7.214(E).

On appeal, defendant argues that there was insufficient evidence to prove that he was not a person lawfully in possession or control of the dwelling. This Court reviews de novo a challenge to the sufficiency of the evidence presented in a bench trial. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). The Court must view the evidence in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). This Court does not make credibility determinations on appeal, but rather, gives deference to the trial court's determinations. *Id.* at 267.

“A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling [or] a person who enters a dwelling without permission with intent to commit a felony, a larceny, or assault in the dwelling . . . is guilty of home invasion in the second degree.” MCL 750.110a(3). To sustain a conviction for this offense the prosecution must show that defendant: “(1) entered a dwelling, either by a breaking or without permission, (2) with the intent to commit a felony or a larceny in the dwelling.” *People v Nutt*, 469 Mich 565, 593; 677 NW2d 1 (2004). Accordingly, the crime requires either a breaking and entering or an entering without permission, which is defined by statute as “without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling.” MCL 750.110a(1)(c).

Defendant contends that his ex-wife's admissions that he spent the night at her house and received mail there, in addition to the fact that his identification card listed his residence at that address, conclusively demonstrates that he was a lessee or other person lawfully in possession or control of the home. We disagree.

Defendant testified that he had been residing in his ex-wife's home since October 2007. However, defendant's ex-wife testified that, although defendant had stayed over night on occasion, it was never more than one night at a time and did not occur very often. These prior occasions do not establish defendant's residency or lawful possession or control at the home. Furthermore, defendant's ex-wife stated that she did not give defendant permission to be in the house on the night of the incident. And testimony established that defendant actually broke down his ex-wife's front door in order to gain entrance.

Defendant testified that he paid his ex-wife \$400 per month in rent and stated that they were involved romantically. He also claimed that he had had a key to the house, but that his ex-wife took the key away from him the night before the incident over an argument involving another woman. However, defendant's ex-wife denied that defendant ever paid her rent, denied that she ever gave him a key, and denied that they were involved in an intimate relationship. She also testified that, because defendant was homeless, she permitted defendant to use her address for both his mail and state issued identification card. She testified that her mailbox was unlocked on the outside of her house and did not require access to the inside of the house to retrieve the contents. She explained that she allowed defendant to use her address "in name only."

From this evidence, the trial court sitting as the finder of fact could rationally conclude that defendant did not have permission to be at his ex-wife's home and was not a resident of that home or a person lawfully in possession or control of the dwelling. There was sufficient evidence to support defendant's conviction. *Sherman-Huffman*, 241 Mich App at 265.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro